Appendix O: Decree of a Circuit Arbitrazh Court (Cassational Instance)

FEDERAL ARBITRAZH COURT FOR THE URALS CIRCUIT

D E C R E E

Of the Cassational Instance for the Verification of the Basis and Legality of the Decisions of Arbitrazh Courts that have Entered into Legal Force

Ekaterinburg
7 August 1999 **Case No. F09-661/99AK**

The Federal Arbitrazh Court for the Urals Circuit for the verification in cassational instance of the legality of decisions and decrees of the arbitrazh courts of the subjects of the Russian Federation, taken by them in the first and second instances, in the composition of:

Presiding judge: N. L. Menshikova
Judges: G. V. Annenkova
Yu. V. Merzlyakov

Considered in a court session the cassational complaint of the State Tax Inspectorate for the City of Satka concerning the decision of the Arbitrazh Court for Chelyabinsk Oblast of 26/05/99 in Case No. A76-3051/99 concerning the suit of OAO "Kombinat Magnezit" against the State Tax Inspectorate for the city of Satka concerning the recognition of the decision as void in part.

In the court session the following representatives of the plaintiff participated:
A.V. Tokarev, power of attorney of 06/08/97 No. 18ur-81
N.I. Genyakova, power of attorney of 18/05/99 No.72/26ur-58
N.V. Tyurina, power of attorney of 10/12/97 no. 79/26-172.

The State Tax Inspectorate for the city of Satka was properly informed of the time and place of consideration of the cassational appeal, but its representative did not appear at the court session.

Their rights and duties were explained to the representatives of the plaintiff. No recusals of judges were petitioned. There were no motions.

The open joint stock society "Kombinat Magnezit" made recourse to the Arbitrazh Court for Chelyabinsk Oblast with a suit on the recognition as void of decision No. 75 of

23/03/99 of the State Tax Inspectorate for the city of Satka (STI) in the part concerning the exaction of tax arrears on VAT in the sum of 83,423,627 rubles, a fine in the amount of 16,684,725 rubles, and a penalty in the amount of 34,690,266 rubles.

By decision of the arbitrazh court, the claims of the suit were satisfied in full [names of judges at the first instance].

In the issuance of the court act, the arbitrazh court made reference to the Law of the RF "On the Value Added Tax", believing that the plaintiff based the impropriety of application to it of financial sanctions [on this Law], since, being occupied with the export of goods beyond the bounds of the Russian Federation, it has privileges in being released from the VAT.

The decision was not considered on appeal.

The STI for the city of Satka did not agree with the decision of the court and requests its reversal and refusal of the suit [of the plaintiff], considering that the plaintiff did not have the right to privileges in the VAT in relation to goods exported upon the instructions of a foreign firm to countries of the CIS.

Having verification the legality of the court act issued through the procedures of Articles 162, 171 and 174 of the APC RF upon the complaint of the tax body, the court of the cassational instance did not find bases for its reversal.

In accordance with subpoint "a" of point 1 of Article 5 of the Law of the RF "On the Value Added Tax", taking account of the decision of 23/09/97 No. GKPI 97-368 of the Supreme Court of the RF, goods, work and services exported beyond the bounds of the member-countries of the CIS are freed from VAT.

As follows from the act of verification of 30/12/98 of the tax body and the export contracts in the materials of the case, the enterprise shipped the products to the countries of the CIS (Ukraine, Kazakhstan, Uzbekistan and so forth) according to contracts concluded with foreign firms from Canada, America, and Denmark, by whose instructions the freight was sent to the recipient, that is, to a legal person located on the territory of the CIS countries. The tax body did not establish the existence of any contractual relations between OAO "Kombinat Magnezit" and the economic subjects of the CIS receiving the plaintiff's products.

In connection with that set forth, the arbitrazh court made the correct conclusion that in the sale of the products to firms of the "far abroad", but shipment of them to a third party located on the territory of the CIS, the enterprise had the right to use the privileges in relation to VAT, since in the given instance, the special rule in relation to the CIS under point 2 of Article 10 of the Law of the RF "On the Value Added Tax" does not apply.

The given conclusion does not contradict the decision of the Supreme Court of the RF of 23/09/97, explaining that "in relation to instances of the shipping of goods by instruction of the purchaser — a legal person of a member-state of the CIS, the question of privileges concerning taxation may be resolved in each concrete instance by the corresponding competent body or by the arbitrazh court."

The given conclusion was made by the court taking account of the content of point 2 of Article 10 of the Law of the RF "On the Value Added Tax", which established the particularities of export only in relation to economic subjects of the member-states of the CIS.

Thus, the arbitrazh court had a basis for the satisfaction of the claims of the suit and the application of subpoint "a" of point 1 of Article 5 of the above-stated Law.

In connection with that set forth, the decision of 26/05/99 of the Arbitrazh Court for Chelyabinsk Oblast is legal and is not subject to reversal.

Being guided by Articles 174, 175 and 177 of the Arbitrazh Procedure Code of the RF, the court

HAS DECREED:

The decision of 25/05/99 of the Arbitrazh Court of Chelyabinsk Oblast in Case No. A76-3051/99 is to be left without change, and the cassational complaint — without satisfaction.

Presiding Judge	[signature]	N.L. Menshikova
Judges	[signature]	G. V. Annenkova
	[signature]	Yu. V. Merzlyakov